

1979 WL 42859 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 12, 1979

*1 William E. Jenkinson, III, Esquire
Williamsburg County Attorney
Post Office Drawer 669
Kingstree, South Carolina

Dear Mr. Jenkinson:

In response to your inquiry concerning whether or not appropriate county officials are authorized to expend county funds for the scraping of private driveways, the hauling of dirt for the filling in of private property, etc., I am enclosing copies of opinions from this Office advising that such practices are not authorized.

What use constitutes a public use, as opposed to an unauthorized private use, of any public funds, including county funds, depends on the facts of each situation but the general rule is that the public benefit must be primary and the private benefit secondary. See, e.g., [Anderson v. Baehr](#), 265 S.C. 153, 217 S.E.2d 43 (1975). For instance, I think that the use of county equipment or county employees on a private driveway or road or other private property in order to secure the removal of a dead body would subserve a valid public purpose and would inure primarily to the public benefit.

I would also point out that county officials who, against legal advice, continue to authorize the use of county funds, equipment or personnel to maintain or improve private property runs the risk of litigation, similar to that which was brought in Union County recently, which could result in damages being awarded against them.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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